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*see Tax Commission's
interpretation 1/12/56
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CONCORD, N.H.

Walter D. Hinkley, Esq.,
Hinkley & Hinkley
Lancaster, New Hampshire

Dear Brother Hinkley:

I must apologize for the long delay in connection with your request for our views on the matter of the veterans' tax exemption. Only yesterday, however, was material brought to my attention which removes any doubts I may have had concerning it.

As you suggest, the problem is one of the interpretation of R. L. c. 73, s. 29 in its latest amendment by Laws 1949 c. 167. Under this section, a veteran meeting certain service qualifications is "exempt each year from taxation upon his or her taxable property as assessed by the selectmen, to the value of one thousand dollars, provided such person and spouse do not own taxable property in this state . . . to the value of more than five thousand dollars." The question is whether the value of his automobile is to be included in determining whether the veteran and his spouse "own taxable property in this state . . . to the value of more than five thousand dollars."

The statutes which you cite tend strongly to support your view. Automobiles are not listed among those classes of personal property liable to be taxed under R. L. c. 73, s. 16; in that listing they are specifically excepted. Subsection III. And in R. L. c. 116, s. 25, it is categorically stated that they shall not be taxed unless in the hands of the manufacturer or he as part of his stock in trade by a dealer.

However, it seems that consideration ought to be given to the entire chapter 116, to its intent and effect, to determine if motor vehicles are in reality subject to tax. I have heard much about the history of the permit system, however, the material given me yesterday is the most definitive statement on the subject I have seen. I quote from the Report of Recess Tax Commission of 1937-38, pages 12-13: (See Laws 1927, c. 201)

"MOTOR VEHICLE PERMIT FEE

The Municipal Permit Law for the Registration of Motor Vehicles,

March 1, 1952

Other indicia that the permit fee is actually a tax appear in R. L. c. 116, s. 17, and in R. L. c. 116, s. 32. Finally, according to the Court, permit fees are, at least, "in the nature of a tax." O'Brien v. Manchester, 84 N. H. 492, 493.

In view of the foregoing, we cannot say that the Tax Commission is without adequate support for the position which it takes. The conflict with the statute which you cite would seem explainable, it is suggested, by deeming them directions to or limitations upon the local taxing units to enjoin them from themselves levying a tax for which provision had been made by the Legislature itself in the enactment of the permit system.

There must next be considered the logical consequence of holding an automobile to be taxable property, that is, if it is taxable, then the veteran is exempt from paying the tax upon it if he meet the five thousand dollar maximum qualifications. Such result is avoided by the language of R. L. c. 73, s. 29. The exemption is allowed only in respect to his "taxable property as assessed by the selectmen"; whether or not he is eligible for the exemption is determined by the measure of his "taxable property in the state." Since the assessment upon automobiles is made by the Legislature under R. L. c. 116 and not by the local selectmen, the exemption would not apply to them.

Very truly yours,

Warren E. Waters
Assistant Attorney General

WEW:RM